

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: June 7, 2011

-----X  
ORLANDO DIAZ

Plaintiff,

- against -

DORA SCHIRO, Commissioner, *et al.*,

Defendants.  
-----X

09 Civ. 10311 (PAC) (FM)

ORDER ADOPTING R&R

HONORABLE PAUL A. CROTTY, United States District Judge:

On December 21, 2009 *pro se* Plaintiff Orlando Diaz ("Plaintiff") filed a complaint alleging he was improperly strip searched while an inmate at Riker's Island. On September 23, 2010 Magistrate Judge Frank Maas issued a Report and Recommendation ("R&R"), recommending that Plaintiff's complaint be dismissed without prejudice. Having reviewed Magistrate Judge Maas' R&R, the Court adopts the Report and Recommendation in its entirety. Accordingly, Plaintiff's complaint is dismissed without prejudice.

### DISCUSSION

In reviewing a Report and Recommendation, a Court "may accept, reject, or modify, in whole or in part the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted).

In this case, Plaintiff's Rule 4 service package was returned to the court because Plaintiff had been released from Rikers Island. (R&R 1.) On September 1, 2010, Magistrate Judge Maas granted

Plaintiff an opportunity to serve a supplemental summons on Defendants. (Id.) This Order was returned to the Court marked "Return To Sender, No Longer Here," and subsequent efforts to locate Plaintiff were unsuccessful. (Id.) Since Plaintiff has failed to provide the Court with his current address, Magistrate Judge Maas recommended that this case be dismissed without prejudice. (Id.)

### **CONCLUSION**

Finding no clear error in Magistrate Judge Maas' analysis, the Court adopts Magistrate Judge Maas' R&R in its entirety. Plaintiff's complaint is, therefore, dismissed without prejudice. The Clerk of Court is directed to enter judgment and close this case. Pursuant to 28 U.S.C § 1915(a), I find that any appeal from this order would not be taken in good faith.

Dated: New York, New York  
June 7, 2011

SO ORDERED



---

PAUL A. CROTTY  
United States District Judge

Copy mailed to:

Orlando Diaz  
141-09-15910  
Otis Bantum Correctional Center  
1600 Hazen Street  
East Elmhurst, New York 11370